

**APPLICANT: MS NOLUNTU NELLISA BAM**

**COURT FOR WHICH CANDIDATE APPLIES: GAUTENG DIVISION OF  
THE HIGH COURT**

**1. The candidate's appropriate qualifications**

1.1. An admitted attorney, the candidate holds five degrees:

1.1.1 B Proc (WSU);

1.1.2 LLB (UKZN);

1.1.3 LLM (UNISA), with a specialisation in income tax;

1.1.4 Postgraduate Diploma in Financial Planning (UFS); and

1.1.5 MBA (Wits).

**2. Whether the candidate is a fit and proper person**

2.1. There is nothing in the candidate's application or judgments to suggest she is not a fit and proper person.

**3. Whether the candidate's appointment would help to reflect the racial and gender composition of South Africa**

3.1. There are currently 73 full time judges on the Gauteng bench, comprising (as far as could be ascertained):

3.1.1. 22 black women (17 African, 3 Indian, 2 Coloured);

3.1.2. 25 black men (18 African, 5 Indian, 2 Coloured);

3.1.3. 13 white women; and

3.1.4. 13 white men.

3.2. The candidate is a black (African) woman.

#### **4. The candidate's knowledge of the law, including constitutional law**

4.1. Although her work generally reflects a significant depth of knowledge and experience in a number of specialist areas of law, the candidate's experience as an acting judge reflects a much broader and growing knowledge base in respect of other areas of the law. Her body of work does not, however, indicate any particular competence in constitutional law.

4.2. We also note that the candidate has no experience in participating in, or running, a criminal trial.

#### **5. The candidate's commitment to the values of the Constitution**

5.1. The candidate's many years of public service, as well as her service in various capacities to her original *alma mater*, indicate a strong commitment to the values of the Constitution.

5.2. The candidate lists the following projects (that she and a colleague pioneered) as her most significant contributions to the law and the pursuit of justice: the FAIS Ombud Graduate Internship Programme, and the FAIS Ombud Supplier Development Programme. Both programmes reflect a strong commitment to meaningful transformation.

5.3. Given the nature and scope of the issues addressed in the candidate's judgments, it is not possible to consider whether her work as an acting judge reflects a commitment to respecting, protecting, and promoting the rights in the Bill of Rights. That said, her judgments do appear to reflect a strong commitment to the rule of law, and the independence of the judiciary.

**6. Whether any judgments have been overturned on appeal**

6.1. No. The candidate lists two judgments that have been taken on appeal. To date, neither appeal has been concluded.

**7. The extent and breadth of the candidate's professional experience**

7.1. In addition to her 15 years at the Office of the FAIS Ombud, including 11 as either Deputy Ombud or Ombud, and her ±54 weeks as an acting judge, the candidate has the following professional experience:

7.1.1. Five years in a firm of attorneys (as a candidate attorney and a professional assistant (1997 to 2001));

7.1.2. Two years as a legal advisor in the insurance industry (2001 to 2003);

7.1.3. Six years as a part-time lecturer (1999 to 2003, 2019, and 2020 to date);

7.1.4. Three years as a consultant to a firm of attorneys (2018 to date);  
and

7.1.5. Three years running her own financial literacy consultancy (2018 to date).

7.2. The candidate does not have a lengthy history in litigation but in the main her judgments reflect an ability to deal with new areas of law.

## **8. The candidate's linguistic and communication skills**

8.1. There is nothing in the candidate's application or judgments to suggest that she is lacking the linguistic and communication skills required of a judge. Her judgments are both well-written and well-reasoned.

## **9. The candidate's ability to produce judgments promptly**

9.1. As of 30 June 2021, the candidate had only two reserved judgments: one was reserved on 7 June 2021; the other was reserved on 11 June 2021. In respect of the latter, heads of argument have yet to be filed.

9.2. A consideration of the candidate's judgments shows a clear and consistent ability on her part to produce judgments promptly, often within weeks of the hearing.

## **10. The candidate's fairness and impartiality**

10.1. The candidate's judgments suggest that she is both fair and impartial.

## **11. The candidate's independent mindedness**

11.1. The candidate's judgments suggest that she is independent minded.

**12. The candidate's ability to conduct court proceedings**

12.1. Since early 2019, the candidate has repeatedly been invited to act on the Gauteng High Court. In addition to recess work in January 2020, she has been invited to act on eight separate occasions.

12.2. There is no reason to believe that the candidate does not have the ability to conduct court proceedings appropriately, although there is an absence of information regarding her ability to run trials, whether criminal or civil.

**13. The candidate's administrative ability**

13.1. The ability to deliver competent judgments on time suggests strong administrative ability.

**14. The candidate's reputation for integrity and ethical behaviour**

14.1. No adverse comments have been received in this regard.

**15. The candidate's judicial temperament**

15.1. No adverse comments have been received in this regard. No concerns appear from the judgments considered.

**16. The candidate's commitment to human rights, and experience with regard to the values and needs of the community**

16.1. The candidate's application form and CV both show a person who appears to have remained in touch with the values and needs of her community.

**17. The candidate's potential**

17.1. The candidate shows great potential, despite not having the type of legal background that most judges have. She brings particular experience and expertise that other judges may often only obtain and/or develop whilst on the bench.

**18. The message that the candidate's appointment would send to the community at large**

18.1. The candidate's appointment would send a message that there is no single career path to a seat on the country's courts, and that there is a place for judges who have not followed traditional career paths. It would also send a message that value is placed in diversity of experience.

## **ANNEXURE: LIST OF JUDGMENTS CONSIDERED**

### **Reported decisions**

*Mohale v S* 2019 (2) SACR 666 (GP)

### **Unreported decisions**

*Botha v Botha* (case no. A135/2020, Gauteng Division, Pretoria)

*BASF South Africa (Pty) Ltd v Commissioner for the South African Revenue Service*  
(case no. IT14305, Tax Court)

*Central Bank of the Republic of Guinea v AD Trade Belgium SPRL Private Limited*  
(case no. 85425/2019, Gauteng Division, Pretoria)

*Fikeni NO and Others v Godfrey and Another* (case no. 41326/2018, Gauteng  
Division, Pretoria)

*V S v A S* (12496/2019) [2020] ZAGPJHC 27 (11 February 2020)

*Nkonoane and Another v S* (A211/2019) [2020] ZAGPJHC 26 (12 February 2020)

*Sangera v S* (A01/2020) [2020] ZAGPJHC 25 (16 January 2020)

*South African Legal Practice Council v Joynt* (20873/20) [2021] ZAGPPHC 471 (28  
July 2021)

*South African Medical Association v South African Medical Association Trade  
Union and Another* (9258/2021) [2021] ZAGPPHC 364 (28 May 2021)

*Ramoba and Another v Government Employees Medical Scheme and Another*  
(88884/2016) [2021] ZAGPPHC 357 (17 May 2021)

*Sasol South Africa (Pty) Ltd v Lawal* (A1266/2019) [2021] ZAGPPHC 356 (24 May 2021)

*First Rand Bank Ltd v Du Plessis* (82121/2018) [2019] ZAGPPHC 454 (27 August 2019)

*Cemblock (Pty) Ltd v Mmege Construction and Projects CC and Others* (64838/18) [2019] ZAGPPHC 442 (20 August 2019)

*Mofokeng v Road Accident Fund* (62941/2015) [2019] ZAGPPHC 362 (13 August 2019)

*Mosepele v S* (A101//2018) [2019] ZAGPPHC 328 (18 July 2019)

*Gonyonga v S* (A100-2018) [2019] ZAGPPHC 323 (18 July 2019)

*Lass v Lubamba and Another* (60923/16) [2019] ZAGPPHC 307 (17 July 2019)

*Mokgaka v S* (A104-2018) [2019] ZAGPPHC 302 (18 July 2019)

*Standard Bank of South Africa Ltd v Travelcol (Pty) Limited and Others* (24934/2018) [2019] ZAGPPHC 228 (29 May 2019)

*Mbenya v S* (A15/2018) [2019] ZAGPPHC 224 (24 May 2019)

*Moloi v S* (04/19) [2019] ZAGPPHC 210 (24 May 2019)

*ABC (Pty) Ltd v Commissioner for the South African Revenue Service* (IT 14305) [2021] ZATC 1 (7 January 2021)